

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DALE ALLEN ABBOTT, II,

Plaintiff,

vs.

DANNY FRANCIS, et al.,

Defendants.

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Case No. 4:22-CV-526 MTS

MEMORANDUM AND ORDER

This matter is before the Court upon review of the file. On May 13, 2022, self-represented plaintiff Dale Allen Abbott, II filed a prisoner civil rights complaint pursuant to 42 U.S.C. § 1983, a petition for restraining order, and an application to proceed without prepaying fees or costs. ECF Nos. 1, 3, 4.

On June 15, 2022, the Court reviewed plaintiff's filings pursuant to 28 U.S.C. § 1915, granted his motion to proceed *in forma pauperis*, and denied his two-sentence petition for a restraining order. ECF No. 6. As to the complaint, the Court determined it was subject to dismissal for failure to state a claim against the defendants who were named in their official capacities only. *Id.* at 4-9. The Court directed plaintiff to file an amended complaint, and provided him with instructions on how to do so. Plaintiff was mailed the appropriate form and warned that his failure to timely comply would result in the dismissal of this action without prejudice and without further notice.

Plaintiff's amended complaint was due on July 15, 2022. To date, however, he has not complied with the Court's June 15, 2022 Memorandum and Order, nor sought additional time to do so. The Court gave plaintiff meaningful notice of what was expected, cautioned him that his

case would be dismissed if he failed to timely comply, and gave him additional time. Therefore, this action will be dismissed without prejudice for failure to comply with the Court's Order and failure to prosecute his case. *See* Fed. R. Civ. P. 41(b); *see also Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (a district court has the power to dismiss an action for the plaintiff's failure to comply with any court order); *Dudley v. Miles*, 597 F. App'x 392 (8th Cir. 2015) (per curiam) (affirming dismissal without prejudice where self-represented plaintiff failed to file an amended complaint despite being cautioned that dismissal could result from failure to do so). This dismissal will not count as a "strike" for purposes of 28 U.S.C. § 1915(g).

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 19th day of August, 2022.

A handwritten signature in black ink, appearing to read 'MATTS', is written over a horizontal line.

MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE